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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
08/476,275	06/07/95	ANDERSON	D 012712-155

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18M1/0701

EXAMINER	
SCHWADRON, R	
ART UNIT	PAPER NUMBER
	1812019

DATE MAILED:

07/01/97

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run \_\_\_\_\_ or continues to run \_\_\_\_\_ from the date of the final rejection
- b) ☒ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).
- ☒ Applicant's response to the final rejection, filed 6/5/97 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☐ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. ☐ They raise new issues that would require further consideration and/or search. (See Note).
- c. ☐ They raise the issue of new matter. (See Note).
- d. ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

2. ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.
3. ☒ Upon the filing an appeal, the proposed amendment ☒ will be entered ☐ will not be entered and the status of the claims will be as follows:

Claims allowed: NONE

Claims objected to: N/A

Claims rejected: 1, 2, 4, 5, 19-28

However;

- ☒ Applicant's response has overcome the following rejection(s): see enclosed note

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because the rejections remain for the reasons of record and those elucidated in the enclosed note.
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

- ☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.
- ☐ Other

*R. Schwadron* 6/30/97

RONALD B. SCHWADRON  
PRIMARY EXAMINER  
GROUP 1800

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6. The rejection of claims 1,2,4,5,21-24 under 35 U.S.C. § 103 as being unpatentable over Robinson et al. (WO 88/04936) in view of Anderson et al. for the reasons elaborated in the previous Office Action is withdrawn in view of the Anderson declarations filed 6/5/97 and 12/20/96. The rejection of claims 25-28 under 35 U.S.C. § 103 as being unpatentable over Robinson et al. (WO 88/04936) in view of Anderson et al. for the reasons elaborated in the previous Office Action remains. With regards to the application of prior art, claims 25-28 are only entitled to priority to application 08/149099, because the claimed invention is not disclosed in parent case 07/978891. Therefore, the submitted Anderson declarations cannot remove Anderson et al. as prior art with regards to claims 25-28, because said publication has a date older than one year before the priority date of the claims under consideration (eg. December, 1991 versus priority date of 11/3/93). Claims 19 and 20 remain rejected under 35 U.S.C. § 103 as being unpatentable over Grossbard in view of Anderson et al. for the reasons elaborated in the previous Office action. With regards to the application of prior art, claims 19 and 20 are only entitled to priority to application 08/149099, because the claimed invention is not disclosed in parent case 07/978891. Therefore, the submitted Anderson declarations cannot remove Anderson et al. as prior art with regards to claims 19 and 20, because said publication has a date older than one year before the priority date of the claims under consideration (eg. December, 1991 versus priority date of 11/3/93).

7. The double patenting rejections elaborated in paragraphs 18 and 19 of the previous Office action are maintained. Regarding applicants comments on page 3 of the amendment filed 6/5/97, the art rejections as elucidated in paragraph 6 of this Office Action still remain.

8. Regarding the IDS filed 4/17/97, said IDS has not been considered because it is not in compliance with 37 CFR § 1.97(d).

9. Papers related to this application may be submitted to Group 180 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). Papers should be faxed to Group 180 at (703) 305-7939.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Ron Schwadron whose telephone number is (703) 308-4680. The examiner can normally be reached Tuesday through Friday from 8:30 to 6:00. The examiner can also be reached on alternative Mondays. A message may be left on the examiners voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 180 receptionist whose telephone number is (703) 308-0196.

RONALD B. SCHWADRON  
PRIMARY EXAMINER  
GROUP 1800



Ron Schwadron, Ph.D.

Primary Examiner

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June 30, 1997